

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10091-JLT

DORNELL WIGFALL,  
Plaintiff,

v.

MICHAEL SHEEHAN, et al.,  
Defendants.

**DEFENDANTS PETER ALLEN AND DAVID NOLAN'S MOTION TO DISMISS FOR  
FAILURE TO COMPLY WITH THIS COURT'S ORDER AND TO STRIKE  
PLAINTIFF'S SUPPLEMENT**

Defendants Peter Allen and David Nolan, former Superintendents of MCI-Cedar Junction ("Defendants Allen and Nolan"),<sup>1</sup> hereby move to dismiss plaintiff's complaint for failure to comply with this Court's Order and further move to strike plaintiff's supplement to complaint.

On July 11, 2005 Defendants Allen and Nolan filed a motion for more definite statement, which this Court granted on September 12, 2005. (Docket Sheet, paper nos. 15, 16.) Fed. R. Civ. P. 12(e) provides that "[I]f the motion [for more definite statement] is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just." Given plaintiff's failure to comply with said Order which was issued approximately two months ago, defendants move that the complaint be dismissed.

Additionally, the Court's docket reflects that plaintiff filed a motion to supplement his complaint with the Court on or about June 20, 2005, which was granted by the Court on November 8, 2005. (Docket Sheet, paper nos. 12, 16.) Plaintiff failed to serve counsel of record

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<sup>1</sup> Defendants Allen and Nolan are the only named defendants who have been served.

with this motion, in violation of Fed. R. Civ. P. 5(a)(b), which requires that every pleading subsequent to the original complaint be served upon each of the parties by serving it upon the attorney. Fed. R. Civ. P. 5(a)(b). (Poole Aff., attached hereto as Ex. A.) Prisoners appearing pro se must adhere to the rules of procedure. “The right of self-representation is not ‘a license not to comply with the relevant rules of procedural and substantive law.’” International Fidelity Ins. Co. v. Wilson, 387 Mass. 841, 847 (19832) (quoting Faretta v. California, 422 U.S. 806, 834-35 n.46 (1975)). Plaintiff’s pro se status does not absolve him from compliance with the Federal Rules of Civil Procedure. U.S. v. Heller, 957 F.2d 26, 31 (1<sup>st</sup> Cir. 1992).<sup>2</sup>

Accordingly, given plaintiff’s failure to comply with this Court’s order and failure to serve counsel of record with the supplement to his complaint, Defendants Nolan and Allen move that both the complaint and the supplement be stricken, and that plaintiff’s complaint be dismissed.

Respectfully submitted,

NANCY ANKERS WHITE  
Special Assistant Attorney General

DATED: November 9, 2005

/s/ C. Raye Poole  
C. Raye Poole  
B.B.O. # 632719  
Department of Correction  
Legal Division  
70 Franklin Street, Suite 600  
Boston, MA 02110  
(617) 727-3300 ext. 147

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<sup>2</sup> Moreover, given the plethora of cases which plaintiff has filed against the Department and its officials in state and Federal court, 75 since 1989, he is no stranger to civil litigation, and, thus, is, or should be, fully aware of the Rules of Civil Procedure. (Dep’t Log of Cases, attached hereto as Ex. B.)

Certificate of Service

I, C. Raye Poole, counsel for defendants Allen and Nolan, hereby certify that on this 8<sup>th</sup> day of November 2005, I served a copy of the herein motion by first class mail, postage prepaid, on the plaintiff, Dornell Wigfall W47068, at his last known address, MCI-Cedar Junction, PO Box 100, South Walpole, Massachusetts 02071

/s/ C. Raye Poole  
C. Raye Poole

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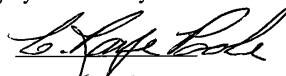
MICHAEL SHEEHAN, et al.,  
Defendants.

**AFFIDAVIT OF C. RAYE POOLE**

I, C. Raye Poole, on oath depose and state as follows:

1. I am an attorney with the legal division of the Department of Correction.
2. I am the attorney of record in the above-captioned matter.
3. Plaintiff has not served me with a copy of his motion to supplement complaint which he filed with the Court on June 20, 2005.

Signed under the pains and penalties of perjury this 11<sup>th</sup> day of November 2005.

  
C. Raye Poole

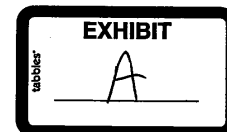


EXHIBIT  
tabbles®  
B

Pym 97-575	05/22/1997 Wg/fall	Dornell	DuBois	Larry	TM	OCCC	No	1101	1106	2000
Pym 97-823	07/29/1997 Wg/fall	Dornell	Bullenhuys	Albert	W47068 MK	OCCC	No DISC	1101	1102	1412
Pym 98-741	06/11/1998 Wg/fall	Dornell	Murphy	Paul	HY	N/A	No	MTD		
Suff - 25	04/12/1996 Wg/fall	Dornell	Duval	Ronald	JJB	N/A	No			
Suff 00-4583	12/08/2000 Wg/fall	Dornell	Proulx	Ronald	KA	CJ	No			
Suff 00-5068	02/06/2001 Wg/fall	Dornell	Pepe	Peter	MM	N/A	Yes			
Suff 00-5199	02/06/2001 Wg/fall	Dornell	Pepe	Peter	MM	N/A	Yes			
Suff 02-3889	09/20/2002 Wg/fall	Dornell	McKlimon	JA	N/A	N/A	No			
Suff 02-3838	09/23/2002 Wg/fall	Dornell	Johnson	Carl	MM	N/A	No			
Suff 03-1022	03/25/2003 Wg/fall	Dornell	Johnson	Carl	xx	N/A	Yes			
Suff 03-1162	03/25/2003 Wg/fall	Dornell	Allen	Peter	xx	N/A	Yes			
Suff 03-3669	09/09/2003 Wg/fall	Dornell	Sheehan	Michael	xx	N/A	Yes			
Suff 05-1976	06/21/2005 Wg/fall	Dornell	Berghans	Francis	xx	N/A	Yes			
Suff 7	12/03/1996 Wg/fall	Dornell	Beislle	Wayne	MM	CJ	Yes	1402	1505	
Suff 95-3674	08/01/1995 Wg/fall	Dornell	Duval	Ronald	MM	CJ	No SJD	1402	1505	1904
Suff 95-5166	01/02/1996 Wg/fall	Dornell	DuBois	Larry	JJB	N/A	No			
Suff 96-4	04/19/1996 Wg/fall	Dornell	Duval	Steve	JJB	N/A	No			
Suff 96-458	03/25/1996 Wg/fall	Dornell	Belanger	Steve	CMA	N/A	No			
Suff 96-4914	09/19/1996 Wg/fall	Dornell	Gatpey	Peter	WW	CJ	No SJD	1004	1412	1705
Suff 96-5157	10/30/1996 Wg/fall	Dornell	Duval	Ronald	JJB	N/A	No	1103		1502
Suff 96-518	02/23/1996 Wg/fall	Dornell	Deorsey	Wayne	TA	N/A	No			
Suff 96-5603	12/16/1996 Wg/fall	Dornell	Beislle	Steven	CP	N/A	No SJD			
Suff 96-5816	01/06/1997 Wg/fall	Dornell	Barrette	Edward	CP	CJ	No			
Suff 97-26	01/24/1997 Wg/fall	Dornell	Doolin	Charles	RMF	CJ	No NEW	1009	1502	1107
Suff 97-27	02/13/1997 Wg/fall	Dornell	Wyazanski	Michael	JD	SECC	Yes SJ	1502	1101	1902
Suff 99-3884	09/20/1999 Wg/fall	Dornell	Maloney	Ronald	SD	N/A	Yes	1605		
USDC 00-12274	01/29/2001 Wg/fall	Dornell	Maloney	Michael	JA	N/A	Yes			
USDC 02-10714	12/24/2003 Wg/fall	Dornell	Maloney	Michael	CP	N/A	Yes			
USDC 03-10714	08/19/2003 Wg/fall	Dornell	Maloney	Michael	JA	N/A	Yes			
USDC 05-10091	06/23/2005 Wg/fall	Dornell	Sheehan	Beverly	MD	N/A	No NOS	1106	1605	
Worc 03-591	04/09/2003 Wg/fall	Dornell	Vagalias	Michael	MD	N/A	Yes			
Wen 6/15/2001	06/15/2001 Wg/fall	Dornell	Maloney	Francis	MD	N/A	Yes			
Wen 6/29/01	06/29/2001 Wg/fall	Dornell	McKlimon	Francis	MD	N/A	Yes			
Wen 7/30/01-2	07/30/2001 Wg/fall	Dornell	Dickinson		MD	N/A	Yes			